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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/607,330

06/26/2003

Armand Malnoe

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4205

29157 7590 02/05/2009
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EXAMINER

DAVIS, DEBORAH A

ART UNIT

PAPER NUMBER

1655

NOTIFICATION DATE

DELIVERY MODE

02/05/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PATENTS@BELLBOYD.COM

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/607,330	Applicant(s) MALNOE ET AL.	
	Examiner DEBORAH A. DAVIS	Art Unit 1655	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 12 November 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: _____.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement(s)*. (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Christopher R. Tate/
 Primary Examiner, Art Unit 1655

Continuation of 11. does NOT place the application in condition for allowance because: Applicant argues that the reference of Anatharaman et al , was withdrawn in the Non-Final Office Action dated February 5, 2008 and that since the newly applied reference of Anatharaman et al (i.e. different patent number) is a continuation, it would be improper to apply it again because both references share the same disclosure. This argument has been fully considered but not found to be persuasive of error. The examiner did not withdraw the reference of Anatharaman et al in the February 5, 2008 rejection. Applicant argues that the reference of Anatharaman et al does not teach chicory comprising sesquiterpene lactones in a concentration of at least 0.5% by weight as stated in the Office Action. Applicant argues that the reference of Anatharaman et al teaches the need to destroy or remove the lactones. Applicant argues that the final mixture is analyzed and was found to be free of lactones. These arguments have been fully considered but not found to be persuasive of error. In response, the reference of Anatharaman et al. teaches the addition of santonin to the mixture of chicory. Santonin is a type of sesquiterpene lactone. Also, the final mixture was analyzed by HPLC for bound sesquiterpene lactones (i.e. not free lactones) and none were found. Therefore, the reference of Anatharaman et al. still anticipates the instant claims because sesquiterpene lactones are found in the composition of chicory. Applicant argues that the reference of Anatharaman et al. does not disclose or suggest a thermally extruded plant material that includes more than one phytochemical agents capable of inhibiting at least one enzymatic and transcriptional activity of inhibit inflammation in a mammal. This argument has been fully considered but not found to be persuasive of error. In response, because there is not a difference in the cited composition and the instant claims, both teach thermally extruded chicory plant material, therefore, functional effects of inhibiting at least one of the enzymatic and transcriptional activity and inflammation in a mammal would be inherent. Applicant argues that the reference of Hwang is not combinable with the reference of Anatharaman et al. because Anatharaman's intent was to destroy or remove sesquiterpenes compounds present in the plant material but the reference of Hwang is directed toward the use of sesquiterpene compounds. This argument has been fully considered but not found to be persuasive for reasons disclosed in the above arguments that explained the reference of Anatharaman did not entirely remove sesquiterpene compounds but also added them to the composition. Therefore, for reasons provided above and of record, the current rejections are hereby maintained.